

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10320 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMABEN BHOWANBHAI PITHWA

Versus

STATE OF GUJARAT

Appearance:

MR HD RANA for Petitioner

MR SP HASURKAR for Respondent No. 1

MR SAURABH MEHTA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/09/1999

ORAL JUDGEMENT

#. In this writ petition under Article 226 of the Constitution, the petitioner is prayed for issuance of a writ or order or direction to the respondent to permanently absorb her as full-timer in view of the circular dated 26/12/80 read with oral order passed in Special Civil Application No.1209/94 and to extent all

the benefits touching to the conditions of services with reference to her original date of appointment.

#. On the record of this Special Civil Application circular dated 26/12/80 is there as Annexure-A.

#. The petitioner was appointed as part time sweeper under dated 5/11/88. As per the case in the Special Civil Application she is continuing till today in the same capacity. Earlier she filed a petition before this court being Special Civil Application No. 10782/92, which was decided on 6/9/94. Her claim for regularization in the services was not accepted. However, the direction was given to the respondent No.2 to decide her representation within a period of one month from the date of receipt of certified copy of that order. In the Special Civil Application as well as during the course of arguments on last dates the impression was given by the petitioner to this court as if the order of the court aforesaid is not complied with. On 10/8/99 this court has given direction to the District Development Officer, Junagadh to remain personally present in the court. Accordingly on 18/8/99 he was present in the court and he has given out that the representation of the petitioner as directed by this court has already been decided on 25/9/95. The court has given direction to the respondent-District Development Officer to file on the record of this Special Civil Application the proof of sending the copy of the aforesaid order made on the representation of the petitioner. The respondent No.1 in the court submitted the file of the petitioner therein there is a document, a representation of the petitioner wherein she has admitted that her representation was decided on 25/9/95. He further states that the copy of this order was sent to the petitioner by ordinary post for which no proof is available on the record.

#. The Special Civil application No.1209/94 was decided by this court on 23/7/98. I find from the judgment of this court that it does pertain to a part time employee. This court has given direction to the State to regularize the services of the part time sweeper as Class IV employee. Shri Hasurkar has given out that against this judgment, the State of Gujarat has already filed Letters Patent Appeal, which has been admitted and this judgment has been stayed. Be that as it may.

#. It is not the case of the petitioner that against sanctioned post of part time sweeper she has been appointed after selection. It is understandable that

part time posts are being created and the appointments are made thereon after selection, the grievance of the part timer to continue them as part timer may be justified and the court may ask the State of Gujarat to find out some way so that after a reasonable time of serving by them as part timers they may get the regular appointment. However, this court sitting under Article 226 of the Constitution in its extraordinary equitable jurisdiction will not permit the State of Gujarat, its functionaries and officers to make this part time employment to be a conduit pipe for regular selection. If such a course is permitted or permitted to be adopted by the respondents then the very provisions as contained under Article 16 of the Constitution will become nugatory. In the public employment which includes part time employment also, the selection has to be made inviting applications from all eligible candidates and to give them opportunity in the selection. If that course would have been adopted then certainly I would have considered the matter to give directions to the respondents to see that these part time employees may be given a reasonable percentage of reservation in Class-IV services. The petitioner got herself appointed without selection i.e. by way of back door entry, to such persons no protection can be given under Article 226 of the Constitution of India by this court. It is true that this case has to be decided on its own facts but on the basis of the facts of this case, I do not find any justification what to say any merit in the claim of the petitioner seeking writ of mandamus against the respondents to regularize her services. This writ petition is wholly misconceived and the same deserves to be dismissed.

#. There is another aspect which needs to be referred. The petitioner has not come up with clean hands before this court. Earlier the petitioner's petition was decided and the direction was given by the court to the respondents to decide her representation. The respondent has decided the representation of the petitioner. But this fact was concealed and suppressed by the petitioner. It is most essential and obligatory for the litigant to candidly disclose all the material facts in the petition. The concealment of the facts if is there and which is very material and relevant in the case, it itself is a good and sufficient ground for the dismissal of this Special Civil Application. On going through the record of the District Panchayat, I am satisfied that the representation of the petitioner was decided by the respondent No.2 on 25/9/95 and the copy of the decision was also sent to the petitioner but deliberately and

purposely the petitioner has concealed this fact from the court.

#. Taking into consideration the totality of facts of the case, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated. However, no order as to costs.

(S.K.Keshote, J.)

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